

HONORABLE JAMES L. ROBART

U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MONTY J. BOOTH, ATTORNEY AT LAW,
P.S., a Washington corporation, individually and
on behalf of a class of Washington businesses
similarly situated,

Plaintiff,

vs.

APPSTACK, INC., a Delaware corporation;
STEVE ESPINOSA, individually; and JOHN
ZDANOWSKI, individually,

Defendants.

NO. 2:13-cv-01533-JLR

**DECLARATION OF BETH E.
TERRELL IN SUPPORT OF
PLAINTIFF'S MOTION FOR CLASS
CERTIFICATION**

I, Beth E. Terrell, declare as follows:

1. I am a member of the law firm of Terrell Marshall Daudt & Willie PLLC ("TMDW"), counsel of record for Plaintiff in this matter. I am admitted to practice before this Court and am a member in good standing of the bars of the states of Washington and California. I respectfully submit this declaration in support of Plaintiff's Motion for Class Certification of the above-captioned class action. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. TMDW is a law firm in Seattle, Washington, that focuses on complex civil and commercial litigation with an emphasis on consumer protection, product defect, employment, wage and hour, real estate, and personal injury matters. The attorneys of TMDW have extensive experience in class actions, collective actions, and other complex matters. They have been appointed lead or co-lead class counsel in numerous cases at both the state and federal level. They have prosecuted a variety of multi-million-dollar consumer fraud, wage and hour, securities fraud, and product defect class actions. The defendants in these cases have included companies such as Wal-Mart, Microsoft, Best Buy, Toyota, Sallie Mae, Comcast, ABM Industries, Inc., AT&T, T-Mobile USA, Weyerhaeuser, Behr Products, American Cemwood, Bank of America, Discover Financial Services, Capital One, and HSBC.

3. TMDW has actively and successfully litigated class action lawsuits under the Telephone Consumer Protection Act as well as the Washington State analog. TMDW has taken the lead in some of the largest nationwide class actions filed under the TCPA, including those filed against large financial institutions such as Sallie Mae, Bank of America, Discover Financial Services, Capital One, and HSBC. I have been appointed co-lead counsel in two of the largest pending MDLs involving TCPA claims, *In re Capital One Telephone Consumer Protection Act Litigation*, 1:12-cv-10064 (N.D. Illinois), and *In re Monitronics International, Inc. Telephone Consumer Protection Act Litigation*, MDL No. 1:13-MD-2493 (N.D. W. Va.).

4. TMDW is litigating or has recently settled the following TCPA class actions:

- *In re Capital One Telephone Consumer Protection Act Litigation*— Filed on behalf of consumers who received automated, prerecorded collection telephone calls on their cellular telephone without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* I serve as court-appointed Interim Co-Lead Counsel; preliminary approval of \$75,455,098.74 settlement was granted on July 29, 2014.
- *Rose, et al. v. Bank of America Corp., et al.*— Filed on behalf of consumers who received automated, prerecorded collection telephone calls on their cellular telephone without their prior express consent within the meaning of the Telephone Consumer Protection

1 Act, 47 U.S.C. § 227 *et seq.* TMDW worked to negotiate a
 2 nationwide settlement of \$32,083,905, which was recently granted
 final approval.

- 3 • *Gehrich v. Chase Bank USA*—Filed on behalf of consumers who
 4 received automated, prerecorded collection telephone calls on their
 cellular telephones without their prior express consent within the
 5 meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227
et seq. TMDW worked to negotiate a \$34,000,000 nationwide
 6 settlement; final approval is pending.
- 7 • *Wilkins, et al. v. HSBC Bank Nevada, N.A., et al.*—Filed on behalf of
 8 individuals alleging that HSBC made prerecorded calls using an
 automatic dialing system. The case settled for \$39,975,000 in 2014
 9 on a class-wide basis, and final approval is pending.
- 10 • *In re Monitronics International, Inc. Telephone Consumer Protection*
 11 *Act Litigation*—Filed on behalf consumers who received automated,
 prerecorded solicitation telephone calls on their residential and
 12 business telephones without their prior express consent within the
 meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227
 13 *et seq.*, the Washington Automatic Dialing and Announcing Device
 statute, RCW 80.36.400, and the Washington Consumer Protection
 14 Act, RCW 19.86 *et seq.* I serve as co-lead counsel in the MDL.
- 15 • *Arthur v. Sallie Mae, Inc.*—Filed on behalf of consumers who
 16 received automated, prerecorded collection telephone calls on their
 cellular telephones without their prior express consent within the
 17 meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227
et seq. TMDW worked to negotiate a \$24.15 million nationwide
 18 settlement, and final approval was granted in 2012.
- 19 • *Hanley v. Fifth Third Bank*—Filed on behalf of consumers who
 20 received automated, prerecorded collection telephone calls on their
 cellular telephones without their prior express consent within the
 21 meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227
et seq. TMDW negotiated a \$4.5 million settlement, which was
 22 granted final approval in December 2013.
- 23 • *Steinfeld v. Discovery Financial Services, et al.*—Filed on behalf of
 24 consumers who received automated, prerecorded collection
 telephone calls on their cellular telephones without their prior
 25 express consent within the meaning of the Telephone Consumer
 Protection Act, 47 U.S.C. § 227 *et seq.* TMDW negotiated an \$8.7
 26 million settlement, which was granted final approval in March, 2014.

- *Chesbro v. Best Buy*—Filed on behalf of consumers who received automated, prerecorded solicitation telephone calls on their residential telephones without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* TMDW negotiated a \$4.5 million settlement, which was granted final approval in September, 2014.

5. TMDW is currently litigating or has recently settled the following class actions:

- *Milligan, et al. v. Toyota Motor Sales, Inc.*—Filed in 2009 on behalf of owners of 2001-2003 Toyota RAV4s containing defective Electronic Computer Modules, which cause harsh shifting conditions and permanent damage to the transmissions. TMDW worked to negotiate a nationwide class action settlement, and final approval was granted in January 2012.
- *Soto v. American Honda Motor Corporation*—Filed in 2012 on behalf of owners and lessees of 2008-2010 Honda Accords that consume motor oil at a much higher rate than intended, due to a systemic design defect. The case settled on a class-wide basis and final approval was granted in March, 2014.
- *Kitec Consolidated Cases*—Served as co-counsel in a national class action lawsuit against the manufacturers of defective hydronic heating and plumbing systems. The case settled for \$125,000,000, and final approval was granted in 2011.
- *Seraphin v. AT&T Internet Services, Inc., et al.*—A multi-state class action filed in 2009 on behalf of AT&T internet customers who paid \$20 a month or less for internet service and were assessed an Early Termination Fee when they cancelled service. A class settlement was approved by the Court in 2011.
- *Smith v. Legal Helpers Debt Resolution LLC*—Filed in 2011 on behalf of consumers who were charged excessive fees for debt adjusting services in violation of Washington law. Class settlements were approved by the Court in December 2012 and December 2013.
- *Brown v. Consumer Law Associates LLC, et al.*—Filed in 2011 on behalf of consumers who were charged excessive fees for debt adjusting services in violation of Washington law. A class settlement was approved by the Court in 2013.
- *Bronzich, et al. v. Persels & Associates, LLC, et al.*—Filed in 2010 on behalf of consumers who were charged excessive fees for debt adjusting services in violation of Washington law. A class settlement was approved by the Court in 2013.

- 1 • *Newell v. Home Care of Washington, Inc., et al.*—TMDW represents
2 a certified class of more than 400 in-home health care workers who
3 allege violations of state wage and hour law. A class settlement was
4 recently negotiated.
- 5 • *Hill v. Xerox Business Services, LLC, et al., and Douglas v. Xerox*
6 *Business Services, LLC, et al.*—TMDW represents two certified
7 classes of current and former call center workers who allege
8 violations of state and federal wage and hour laws. Both cases were
9 filed in 2012 and are pending in the United States District Court for
10 the Western District of Washington.
- 11 • *Dickerson v. Cable Communications, Inc., et al.*—Filed in 2012 on
12 behalf of approximately 500 individuals alleging their employer
13 violated Oregon’s wage and hour laws. Defendants’ systematic
14 scheme of wage and hour violations involved, among other things,
15 failure to pay non-managerial installation technicians for all hours
16 worked, including overtime. The case settled on a class-wide basis,
17 and approval was granted in 2013.
- 18 • *Khadera v. ABM Industries, Inc.*—TMDW represented 337
19 employees who alleged violations of federal and state wage and hour
20 laws. The case settled, and final approval was granted in 2012.
- 21 • *Simpson v. ABM Industries, Inc.*—TMDW represented a CR 23 class
22 of approximately 6,800 employees who alleged Washington State
23 wage and hour violations. The case settled in March 2012, and final
24 approval of the settlement was granted on September 2012.
- 25 • *Barnett, et al. v. Wal-Mart Stores, Inc.*—Filed in 2001 on behalf of
26 Washington employees alleging wage and hour violations by the
27 country’s largest private employer. After more than seven years of
litigation, TMDW obtained a settlement of \$35 million on behalf of a
certified class of approximately 88,000 employees. That settlement
was approved in July 2009.
- *McGinnity, et al. v. AutoNation, Inc., et al.*—TMDW represented a
certified class of more than 500 employees who were denied earned
vacation benefits. After nearly two years of litigation before an
arbitrator, we obtained an award of \$2.34 million on behalf of the
class. We successfully defended the award on appeal, and the
Washington Supreme Court denied defendants’ petition for review.
A judgment in excess of \$2,600,000 was satisfied in September
2009.

- *Ramirez, et al. v. Precision Drywall, Inc.*—TMDW represented a certified class of workers who alleged they were not paid for overtime work. The case was tried before a jury during a five-week period in 2010, and TMDW successfully obtained a judgment for the workers in excess of \$4,000,000. TMDW continues to work on enforcing the judgment against multiple defendants.

6. I am the lead attorney from TMDW in the instant litigation. A founding member of TMDW, I concentrate my practice in complex litigation, including the prosecution of consumer, defective product, and wage and hour class actions. I have served as co-lead counsel on numerous multi-state and nationwide class actions. I also handle a variety of employment issues including employment discrimination, restrictive covenant litigation, and pre-litigation counseling and advice.

7. I received a B.A., magna cum laude, from Gonzaga University in 1990. In 1995, I received my J.D. from the University of California, Davis School of Law, Order of the Coif. Prior to forming TMD in May 2008, I was a member of Tousley Brain Stephens PLLC. I am a frequent speaker at legal conferences on a wide variety of topics including consumer class actions, employment litigation, and electronic discovery, and I have been awarded an “AV” rating in Martindale Hubble by my peers.

8. I am actively involved in several professional organizations and activities. For example, I currently serve as a Vice President for the Washington State Association of Justice (“WSAJ”), and serve on the WSJ Executive Committee. I am also the current Chair of the WSJ’s Consumer Protection Section. I am the current Chair of the Washington Employment Lawyers Association and a member of the Public Justice Foundation’s Board of Directors. I serve on the Foundation’s Development, Case Evaluation, Membership, and Class Action Preservation Committees.

9. I have been repeatedly named to the annual Washington Super Lawyers list (2005, 2010, 2011, 2012, 2013, and 2014) by Washington Law & Politics Magazine. I was also named to their Top 100 Washington Super Lawyers list (2014) and their Top 50 Women Super Lawyers list (2012, 2013, and 2014).

10. Mary B. Reiten is a member of TMDW. Ms. Reiten received her B.A. with high honors from the University of California, Berkeley in 1991 and graduated from the University of California, Hastings College of Law in 1998. Prior to joining TMDW, Ms. Reiten was a member of Tousley Brain Stephens PLLC. Ms. Reiten was also an associate at Lieff Cabraser Heiman & Bernstein for one year and clerked for the superior courts of Sitka, Alaska and San Francisco, California. Ms. Reiten has represented plaintiffs in several consumer class actions, including *Spafford v. EchoStar*; *Hartman, et al. v. Comcast*; *Richison v. American Cemwood Corp.*; *Zwicker et al. v. General Motors Corporation*; and *Trimble v. Holmes Harbor Sewer District, et al.* In 2004, Ms. Reiten was named a Washington “Rising Star” by Washington Law & Politics magazine.

11. Whitney B. Stark is an associate at TMDW. Ms. Stark received her B.A. from Vassar College and graduated from the University of California, Hastings College of Law. Ms. Stark is a member of the bar of the states of California, Washington, and Oregon. Ms. Stark has extensive experience in complex litigation, including consumer, employment and civil rights cases. Her practice emphasizes consumer protection and employment class actions, including complex wage and hour litigation, employment discrimination, unfair competition, misrepresentation and fraudulent activities.

12. Prior to joining TMDW, Ms. Stark was an associate at Rukin, Hyland, Doria & Tindall and at the Sturdevant Law Firm where she focused on employment and high-impact consumer rights class actions. Ms. Stark has also litigated fair housing and predatory lending cases at the Fair Housing Law Project. Ms. Stark served as a judicial extern to the Honorable Magistrate Edward Chen of the United States District Court for the Northern District of California.

13. TMDW is jointly prosecuting this proposed class action with the Gallagher Law Office P.S. Gallagher Law Office P.S. is a law office in Bainbridge Island, Washington, that focuses on civil litigation with an emphasis on consumer protection and employment matters,

1 including the prosecution of class actions involving multi-million-dollar disputes involving
2 allegations of violation of consumer laws. The defendants in past cases have included
3 companies such as Wells Fargo Bank NA and Echostar Communications, Inc.

4 14. Daniel C. Gallagher concentrates his practice in employment disputes and
5 consumer class actions. Mr. Gallagher has served as co-lead counsel on state and nationwide
6 class actions. He also handles a variety of employment issues, including employment
7 discrimination and whistle-blower retaliation. Mr. Gallagher received a B.A., with honors,
8 from the University of Iowa in 1986. In 1990, he received his J.D. from the University of
9 Oregon School of Law. Mr. Gallagher has practiced in Washington State and Federal Courts
10 since 1992.

11 15. TMDW, along with the Gallagher Law Office, has invested numerous hours and
12 advanced significant costs into the investigation and prosecution of this case, and we have the
13 ability and intention to continue to pursue the case to a successful conclusion.

14 I declare under penalty of perjury under the laws of the state of Washington and the
15 United States of America that the foregoing is true and correct.

16 EXECUTED this 14th day of November, 2014 at Seattle, Washington.

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18 /s/ Beth E. Terrell, WSBA #26759
19 Beth E. Terrell, WSBA #26759
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CERTIFICATE OF SERVICE

I, Mary B. Reiten, hereby certify that on November 14, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 14th day of November, 2014.

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